



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/316(CHE)2021

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of **MALLUR SIDDESWARA SPINNING PRIVATE
LIMITED**

M/s. YARN UDYOG,

Registered Office:

P.B. No. 1006, 3.6.168/6,

Hyderguda, Hyderabad-500 029

... Applicant / Operational Creditor

-Vs-

**MALLUR SIDDESWARA SPINNING
PRIVATE LIMITED,**

CIN: U17111TZ1981PTC001035

Registered Office:

Attayampatti Road, Attanur Post,

Rasipuram TK, Namakkal District,

Tamil Nadu-636 301

... Respondent / Corporate Debtor

Order Pronounced on **31st March, 2023**

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor: Mr. S.V. Vanshi Krishna, 4Advocate

For Corporate Debtor: Ms. M. Sanjana, Advocate

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This application under Section 9 of the Insolvency &
Bankruptcy Code, 2016 ("in short **"IBC"**") filed by the Operational
Creditor i.e. **Yarn Udyog** is for initiating Corporate Insolvency



Resolution Process ("CIRP") against the Respondent/Corporate Debtor i.e. **M/s. Mallur Siddeswara Spinning Private Limited**.

2. The case of the Applicant/Operational Creditor is that it is a partnership firm engaged in manufacture and supply of cotton and cotton yarn to various garment and textile manufactures in wholesale and retail. It had supplied F.P. Cotton Bales material to the Respondent/Corporate Debtor, who was engaged in manufacture and production of various kinds of garment and textile products, from time to time for the past few years through various invoices which were received and utilized by it for its business purposes. The payments against the invoices used to be made through a Current Account on a running basis.

3. It is alleged that the Corporate Debtor failed to pay the overdue amounts of Rs.2,21,91,044/- (Rupees Two Crore Twenty-One Lakhs Ninety-One Thousand and Forty-Four only) as on 20.02.2020 (being the principal amount of Rs.1,65,60,017/- and interest thereon of Rs.56,31,027/- @ 24% per annum as per terms of Tax Invoice Clause No.2) to the Operational Creditor. The Corporate Debtor vide mail dated 29.06.2020 admitted the default and sent the detailed ledger account from 01.04.2019 to 31.03.2020 admitting that an amount of Rs.2,49,05,869.56/- was due and payable as on 31.03.2020. Since it was a running account out of which, some amounts were received and some sale of the



finished goods was made to the Operational Creditor, after adjusting the transactions, the Corporate Debtor was left with unpaid principal amount of Rs.1,65,60,017/-. It is stated that it is an undisputed and admitted debt overdue which is not paid by the Corporate Debtor.

4. It is stated that the Operational Creditor issued statutory demand notice dated 5th March, 2021 along with the invoices, e-way bills and account statements demanding payment of the debt amount of Rs.2,21,91,044/- (Rupees Two Crore Twenty-One Lakhs Ninety-One Thousand and Forty-Four only) which was duly received by the Corporate Debtor. The Corporate Debtor chose to remain silent and did not respond. It neither paid the unpaid operational debt nor brought to the notice of the Applicant the existence of any dispute.

5. It is stated that the Operational Creditor being an MSME Enterprises had filed an application before the Micro and Small Enterprises Facilitation Council ("**MSME Council**") under SAMADHAN Scheme under Section 18(1) of MSMED Act, 2006 for delayed payment of the dues where the Corporate Debtor on 21.09.2020 admitted the debt and pleaded that *"it was making all sorts of efforts to settle the outstanding dues as soon as possible"*.

6. On getting notice of the application, the Respondent filed its reply alleging that the alleged defaults of the Operational Debt



claimed by the Applicant under the invoices 111/19-20, 112/19-20 and 113/19-20 occurred after 25th March, 2020 and are therefore barred under Section 10A which *inter alia* provides that “no application for initiation of CIRP of the Corporate Debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified”. It is stated that the calculation sheet for computation of the Operational Debt placed as Annexure-4 provides the dates of alleged default under the invoices which shows that the payments under the above invoices for a total principal debt of Rs.84,50,828/- (Rupees Eighty-Four Lakhs Fifty Thousand Eight Hundred and Twenty Eight only) fell due and were defaulted only in April 2020 i.e. after 25th March, 2020 and thus cannot be the subject of the present application. The total Operational Debt stands restricted to the alleged defaults claimed under Invoice Nos. 85/19-20, 94/19-20 and 102/19-20 which allegedly occurred in February, 2020.

7. It is stated that the Applicant knowingly misrepresented the date of default in an attempt to circumvent the provisions of Section 10A of the Code and thus, the resulted operational debt claimed under the invoices 85, 94 and 102 do not meet the minimum default amount under Section 4 to maintain this application. It is further stated that the Respondent following the



filing of the present application, made the part payment on different dates of a total sum of Rs.40,000/- to the Applicant.

8. It is stated that there are pre-existing disputes as to the debt. The Applicant prior to filing of this application, had initiated proceedings before the MSME Council claiming the same amounts where the Respondent in its reply dated 21.09.2020 had disputed the claim alleging that adjustments have not been made against the yarn supplied by the Respondent to the Applicant. The MSME Council accordingly rejected the claims vide order dated 18.09.2021. It is stated that the parties had an arrangement since 2012 under which the Applicant would sell raw cotton to the Respondent who would then spin the same into yarn and sell the yarn to the Applicant. The dues would be set off against sales and purchases made between the parties. It is alleged that the Applicant erroneously claimed the interest though it is well settled position of law that the interest claimed on delay in payments cannot be included in the computation of operational debt. It is alleged that there are serious discrepancies in the Applicant's calculation of alleged dues and therefore the Respondent seriously disputes the operational debt claimed by the Applicant.

9. The Applicant filed the rejoinder wherein it denied the averments made in the reply. It is stated that the invoices at page 24 to 35 clearly show that a maximum 30 days' period is allowed



for the payment from the date of invoice as per Clause No.2 and on the 30th day, the amount can be treated as due and the defaulted amount is subject to interest @ 24% per annum. The details are placed at Page 3 of the rejoinder which are reproduced as under:

Invoice Date	Invoice No.	Amount of material supplied PRINCIPAL AMOUNT (Rs.)	Due date by giving 30 days credit (as per condition No.2 of each invoices)
22.12.2019	85/19-20	28,07,676.00	21.01.2020
11.01.2020	94/19-20	28,64,080.00	10.02.2020
28.01.2020	102/19-20	28,28,733.00	27.02.2020
21.02.2020	111/19-20	27,81,035.00	22.03.2020
22.02.2020	113/19-20	28,32,115.00	23.03.2020
22.02.2020	112/19-20	28,37,680.00	23.03.2020
TOTAL AMOUNT DUE		1,69,51,319.00	Last due date is 23.03.2020
Less: amount received on 22.12.2019 (being Running Account)		3,91,301.00	
NET PRINCIPAL AMOUNT DUE:		1,65,60,018.00	23.03.2020

10. It is stated that after completion of period of 30 days without interest, the debt in respect of Invoices No. 111/19-20, 112/19-20 and 113/19-20 fell due on 22.03.2022, 23.03.2022 and 23.03.2022 respectively and not in April 2020 and hence, the defaults do not violate the provisions of Section 10A of the Code. It is stated that no payments of Rs.40,000/- as alleged were made by



the Respondent. The Respondent has not placed any proof of such payments. It is stated that even if the said amount is given credit, the principal amount alone is much more than the threshold limit of Rs.1.00 Crore.

11. It is stated that the MSME Council rejected the claim on technical reasons as the subject-matter of claims pertained to supply of commodity by trading activity which is not an eligible activity for MSME Council to seek arbitration under MSMED Act, 2006. It also lacked jurisdiction due to non-arbitrariness of the subject-matter.

12. It is stated that there was no such arrangement between the Applicant and the Respondent neither oral or written regarding supply of raw cotton and selling the finished product of yarn. It is stated that the interest has been calculated based on the terms of the invoices which were duly accepted by the Corporate Debtor.

13. We have heard Ld. Counsel for the parties and have given thoughtful considerations to their rival contentions and perused the documents on record.

14. A perusal of record reveals that the statutory demand notice issued on 05.03.2021 was on the basis of invoices in respect of which, the payments were not received by the Applicant. The invoices have been tabulated in para-8 of the order. These



invoices are of the period from 22.12.2019 to 22.02.2020 for a total amount of Rs.1,69,51,319/-. Against those invoices, an amount of Rs.3,91,301/- (Rupees Three Lakhs Ninety-One Thousand Three Hundred and One only) was received on 22.12.2019, (being the running account). The net principal amount due on the Respondent was Rs.1,65,60,017/-. As per terms and conditions stipulated on the invoices, interest will be charged @ 24% per annum if payments are not received within 30 days from the invoice date meaning thereby that the Respondent/Corporate Debtor was liable to make the payments against the invoices within the period of 30 days lest it was liable to pay interest @ 24% per annum. The last invoice is dated 22.02.2020 for Rs.28,37,680/-. In the year 2020, the month of February had 29 days. 30 days period therefore expired for the invoice issued on 22.02.2020, on 23.03.2020. The Applicant has rightly calculated the due date in the rejoinder at Para 4.6 by giving 30 days' credit as per Clause No.2 of the invoice. Thus, the last due date became as 23.03.2020 and not the date in April, 2020.

15. Section 10A of IBC, 2016 provides for suspension of initiation of CIRP. It reads as follows:

"10A: Suspension of initiation of corporate insolvency resolution process.



Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf;

PROVIDED that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation: For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

16. As evident from the record, the alleged default arose before 25th March, 2020. Therefore, the contention of the Respondent that the operational debt claimed by the Applicant is barred under Section 10A of the Code since the alleged defaults occurred after 25th March, 2020 has no legs to stand. In Form-5 also, the Applicant has given the date from which the debt fell due i.e 22.02.2020. This application under Section 9 has been filed on 04.04.2021 where the Applicant has claimed Rs.1,65,60,017/- being the principal amount and interest of Rs.56,31,027/- at the contractual rate of 24% per annum as per tax invoice Clause No.2 being unpaid to the Operational Creditor from the date the amount became due till 27.02.2021.



17. Admittedly, the Applicant has filed the calculation sheet in the form of Annexure-2 wherein against invoices No. 111, 112 and 113, the due dates have been mentioned as 01.04.2020, 02.04.2020 and 02.04.2020 respectively and calculated the delayed days for the purposes of interest/delayed interest but from the invoices and the terms and conditions on the invoices, it can be seen that the due dates against the said invoices were 22.03.2020, 23.03.2020 and 23.03.2020. This was a mistake on the part of the Applicant while making calculation of interest, which is always subject to correction and does not carry any significance. This Tribunal can take judicial notice of the same. On this very ground, the application cannot be thrown away or dismissed in *limine*.

18. In the instant case, the Respondent/Corporate Debtor had received the demand notice under Section 8 of IBC which it never responded within the period prescribed under the Code. No document was placed in pleadings by the Respondent to show that any dispute was raised even prior to sending of the demand notice. It raised the dispute for the first time as to the existence of an arrangement since 2012 under which, the Applicant/Operational Creditor would sell raw cotton to the Respondent/Corporate Debtor who would then spin the same into yarn and sell the yarn to the Applicant and the dues would be set off against sales and purchases made between the parties. The Applicant in its rejoinder



has denied this arrangement. Further, the Respondent failed to place any document in support of such arrangement as alleged. In the absence of any such proof and specific denial on the part of the Applicant, this contention of the Respondent cannot be sustained.

19. As regards the contention that there are pre-existing disputes as to the debts claimed, admittedly, the Applicant prior to filing this application, had initiated proceedings before MSME Council seeking the same amount claimed as outstanding but the said application was dismissed by the MSME Council simply on the ground that the subject matter of claim is not that of a small enterprise, supply of goods or services and it pertained to supply of only raw material as a trader and there existed no other reciprocal obligations. It was held that MSME Act, 2006 does not provide scope for arbitration of non-MSME subject matter in dispute even if claimant is registered as MSME for other procedural reasons. It has simply held that it has no jurisdiction to conduct the arbitration in the claim between the claimant of the Applicant and the Respondent.

20. It is pertinent to note that in reply to the petition filed before the MSME Council, the Respondent had admitted the debt and pleaded that it was making all sorts of efforts to settle the outstanding dues as soon as possible. In this case, the invoices are not disputed by the Respondent. The structure of payments



against the invoices is also not in dispute. The record under statement shows that a sum of Rs.1,65,60,617/- was payable against the aforesaid invoices.

21. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016 as the default is for more than Rs.1.00 Crore. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by the Insolvency and Bankruptcy Board of India applicable for the period between January 2023 - June 2023 hereby appoints **Mr. Palanigounder Eswaramoorthy** with Registration Number **[IBBI/IPA-002/IP-N00284/2017-18/10842]** **E-mail ID:-eswarfcs@gmail.com** as the "Interim Resolution Professional". The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the Code before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

22. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under



the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including the execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this subsection, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for



the use or continuation of the license or a similar grant or right during moratorium period;

23. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.



24. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

25. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (Rupees Two Lakh only) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26 Based on the above terms, CP(IB)/316(CHE)/2022 stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the



order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI is also furnished with a copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Suguna